

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Owen Godshall	Team: Squad #15	CCRB Case #: 202005783	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 08/21/2020 12:30 PM	Location of Incident: 2585 Broadway	Precinct: 24	18 Mo. SOL 2/21/2022	EO SOL 5/4/2022	
Date/Time CV Reported Sat, 08/22/2020 9:48 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sat, 08/22/2020 9:48 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Andrew Nyberg	03026	903181	024 PCT
2. POM Ahmed Shahzad	18540	968798	024 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Andrew Nyberg	Abuse: Police Officer Andrew Nyberg threatened to arrest § 87(2)(b)	
B.POM Andrew Nyberg	Abuse: Police Officer Andrew Nyberg forcibly removed an individual to the hospital.	
C.POM Ahmed Shahzad	Abuse: Police Officer Ahmed Shahzad forcibly removed an individual to the hospital.	
D.POM Andrew Nyberg	Abuse: Police Officer Andrew Nyberg threatened to arrest an individual.	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

## Case Summary

On August 22, 2020, § 87(2)(b) filed this complaint with the CCRB via the website.

At approximately 12:30 p.m. on August 21, 2020, a female, identified only as “§ 87(2)(b)” entered the UPS Store at 2585 Broadway, in Manhattan. § 87(2)(b) works at the store. § 87(2)(b) became upset and began knocking over the store’s computers. § 87(2)(b) called 911 to report § 87(2)(b). Police Officer Andrew Nyberg, Police Officer Ahmed Shahzad, Police Officer Edward Lam and Police Officer Jonathan Guillen of the 24<sup>th</sup> Precinct responded to the location. The officers took § 87(2)(b) outside to interview her. While they spoke to her in front of the store, § 87(2)(b) follow them outside and demanded that they arrest her. Police Officer Nyberg then threatened to arrest § 87(2)(b). (Allegation A: Abuse of Authority – Threat of arrest, § 87(2)(g)) After the officers interviewed § 87(2)(b) outside, Police Officer Nyberg and Police Officer Shahzad decided to have her hospitalized as an emotionally disturbed person (EDP) (Allegations B and C: Abuse of Authority – Forcible removal to the hospital, § 87(2)(g), § 87(2)(b) initially agreed to ride with them to § 87(2)(b) in their marked SUV. When they arrived, however, § 87(2)(b) changed her mind and refused to go inside. Police Officer Nyberg threatened to arrest her if she did not cooperate (Allegation D: Abuse of Authority – Threat of arrest, § 87(2)(g)). The officers then handcuffed § 87(2)(b) and escorted her inside. She was not arrested.

§ 87(2)(g), § 87(4-b)

The investigation obtained video footage from the UPS Store. It is attached in IAs #27-28 (Board Review #01-02) and summarized in IA #29 (Board Review #03). Five clips of body-worn camera (BWC) footage from the four officers was also obtained and attached in IA #31 (Board Review #04). It is summarized in IA #32 (Board Review #05). No other video footage was obtained.

## Findings and Recommendations

### Allegation (A) Abuse of Authority: Police Officer Andrew Nyberg threatened to arrest

§ 87(2)(b)

§ 87(2)(b) was interviewed by the CCRB on August 28, 2020. § 87(2)(b) the UPS Store’s manager, provided a telephone statement on August 31, 2020 (Board Review #06). On September 1, 2020, § 87(2)(b) another store employee, provided a telephone statement (Board Review #07). Police Officer Nyberg and Police Officer Shahzad were interviewed by the CCRB on March 18, 2021.

The investigation was unable to identify the female who entered the UPS Store and was subsequently hospitalized. Her first name was determined to be “§ 87(2)(b)”

It is undisputed that § 87(2)(b) entered the UPS Store at 2585 Broadway and complained about a cell phone that she claimed to have purchased there earlier. The employees explained that they do not sell phones. She then became upset and knocked over a plastic barrier and several computers on the store’s counter. § 87(2)(b) and § 87(2)(b) called 911 to report the disturbance. Police Officer Nyberg, Police Officer Shahzad, Police Officer Lam and Police Officer Guillen responded to the store. The officers escorted § 87(2)(b) to the sidewalk in front of the store. There were several customers lined up in front of the store at the time, waiting to get inside. While the officers interviewed § 87(2)(b) § 87(2)(b) came outside twice, first to tell the people in line that § 87(2)(b) was

responsible for the delay in service, and then again to tell the officers that she wanted them to arrest § 87(2)(b) § 87(2)(b) then went back inside the store. Police Officer Nyberg followed her inside. He told her not to tell him how to do his job. He also threatened to arrest her. § 87(2)(b) did not respond to him. Police Officer Nyberg then left the store. None of the officers arrested § 87(2)(b) § 87(2)(b).

§ 87(2)(b) § 87(2)(b) and § 87(2)(b) all stated that after the police responded to the store and took § 87(2)(b) outside, § 87(2)(b) exited the store. § 87(2)(b) and § 87(2)(b) stated that § 87(2)(b) told the customers waiting in line outside the store that service would be delayed due to § 87(2)(b) outburst. She also told the officers outside that she wanted them to arrest § 87(2)(b) for damaging the store's equipment. § 87(2)(b) did not hear what § 87(2)(b) stated when she went outside. § 87(2)(b) walked back into the store and returned to the counter. Police Officer Nyberg then walked inside and told § 87(2)(b) not to tell him how to do his job. § 87(2)(b) stated that Police Officer Nyberg told her, "I will have you arrested, too." § 87(2)(b) stated that Police Officer Nyberg told § 87(2)(b) that she was "this close" to being arrested. § 87(2)(b) stated that Police Officer Nyberg told § 87(2)(b) "You should also be in jail like the woman outside." None of the civilians alleged that Police Officer Nyberg told § 87(2)(b) why she might be arrested.

Police Officer Nyberg's BWC footage is attached in IA #31 (Board Review #04). He recorded two videos. In the first video, PO Nyberg arrives at the UPS Store and escorts § 87(2)(b) outside, where he asks her what is happening. At 3:00 into the recording, § 87(2)(b) exits the store and addresses the customers in line in front of the store. She states, "Good afternoon, customers, we apologize. This crazy woman knocked over our computer systems. She trashed everything inside. Please bear with us. I am so sorry this woman did this. Please bear with us, okay guys? We appreciate you and are trying to help you. Sir, I apologize. The whole order I was doing with you... she knocked over the computer... so we're trying to reboot it. I will give you a second and I apologize..." § 87(2)(b) then goes back inside. At 4:45 into the recording, § 87(2)(b) comes back outside. She shouts at PO Nyberg, stating, "We want to press charges. She broke our computer system. She pushed down our safety guard. We want to press charges. She cannot just walk free for what she did today. This belligerent African-American woman." She turns to a customer and tells him to step inside. She then tells Police Officer Nyberg, "This is not acceptable." Police Officer Lam tells her that they will handle it. § 87(2)(b) replies, "No, that's not enough. I want her to be arrested."

At 7:05 into the recording, Police Officer Nyberg states, "I'm going to set this woman straight." He then walks into the store, where § 87(2)(b) is standing behind the counter. He tells § 87(2)(b) "So, you don't come out and tell me how to do my job, alright? We'll start with that. And what's acceptable and what's not acceptable." § 87(2)(b) replies, "Okay." Police Officer Nyberg states, "Alright?" She replies, "Yes, sir. The lady, she knocked over all our computers..." Police Officer Nyberg walks back to the door. He then turns and states, "What's not acceptable is coming out, and, you're just as close to getting arrested as she is. And I'll tell you that right now." He then leaves. He has no further interactions with § 87(2)(b).

Police Officer Nyberg and Police Officer Shahzad both stated that they felt that § 87(2)(b) actions during the incident constituted disorderly conduct. They stated that she felt that she inappropriately "incited" the customers waiting in line by blaming their delay on § 87(2)(b). When asked what they felt that § 87(2)(b) was inciting the bystanders to do, both officers stated that they were concerned that some of the bystanders might take hostile action towards § 87(2)(b). None of the bystanders, however, responded to § 87(2)(b).

Police Officer Nyberg stated that he told § 87(2)(b) that she might be arrested because she had committed disorderly conduct by telling the customers in line that § 87(2)(b) had caused the delay. He

did not believe her to be guilty of any other offenses besides disorderly conduct. He ultimately decided against arresting her because he felt that § 87(2)(b) was only frustrated by § 87(2)(b) actions and that arresting her would not improve the situation.

New York State Penal Law §240.20 states that a person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, they engage in fighting behavior, make unreasonable noise, use abusive or obscene language or gestures, disturb a lawful assembly, obstruct vehicular or pedestrian traffic, congregates with other persons in public and refuses a lawful order to disperse, or creates a hazardous or physically offensive condition by an act which serves no legitimate purpose (Board Review #08).

The investigation determined that Police Officer Nyberg was not justified in threatening to arrest § 87(2)(b) actions outside the store did not constitute disorderly conduct. Police Officer Nyberg and Police Officer Shahzad accused her of this offense because they felt that she “incited” the customers in line by blaming their delay on § 87(2)(b). The BWC footage, however, confirms that she did not direct the crowd to take any action towards § 87(2)(b) and that the customers did not become hostile towards § 87(2)(b) afterwards. She did not use profanity or obscene language or obstruct traffic while addressing the customers. Her comments also served a clear and legitimate purpose, as she was attending to the concerns of customers at her place of employment.

§ 87(2)(g) § 87(2)(b)

**Allegation (B) Abuse of Authority: Police Officer Andrew Nyberg forcibly removed an individual to the hospital.**

**Allegation (C) Abuse of Authority: Police Officer Ahmed Shahzad forcibly removed an individual to the hospital.**

It is undisputed that § 87(2)(b) entered the UPS Store to complain about a cell phone she claimed to have purchased there. The store employees explained to her that they do not sell phones there. § 87(2)(b) became upset and started knocking things off the store’s counter. § 87(2)(b) and § 87(2)(b) called 911 to report her. When the officers arrived, they spoke to § 87(2)(b) in front of the store. She told the officers as well that she was at the store to complain about a phone she claimed to have purchased there. Police Officer Nyberg and Police Officer Shahzad determined that § 87(2)(b) was emotionally disturbed. They called an ambulance to transport her to a hospital. When the ambulance was delayed, however, they asked § 87(2)(b) if she would ride with them to the hospital. § 87(2)(b) initially agreed. The officers loaded her into their marked SUV and drove her to § 87(2)(b). When they arrived, however, § 87(2)(b) refused to exit the vehicle and go into the hospital. Police Officer Nyberg threatened to arrest her if she did not comply. He and Police Officer Shahzad then handcuffed § 87(2)(b) and escorted her into the hospital.

§ 87(2)(b) and § 87(2)(b) both stated that they believed § 87(2)(b) to be mentally ill due to her irrational behavior, including her repeated insistence that she had bought a phone at the store. None of the store employees saw what happened to § 87(2)(b) after the officers escorted her out of the store. They were not aware of her being hospitalized after the incident.

The investigation was unable to identify § 87(2)(b) and was therefore unable to obtain her medical records.

§ 87(2)(b) conduct prior to the officers’ arrival is captured in the UPS Store’s video footage, which is

attached in IAs #27 and #28 (Board Review #01-02). Both videos show § 87(2)(b) trying to walk behind the counter where the employees are standing. § 87(2)(b) stands in front of her, blocking her path. § 87(2)(b) then knocks over a clear plastic barrier erected in front of the desk as well as two computer monitors behind the barrier.

Police Officer Nyberg and Police Officer Shahzad both stated that § 87(2)(b) appeared to be in a confused and disoriented state when they arrived at the UPS Store. While the employees accused her of knocking the computers over at the desk, she was not doing anything when they arrived. The officers escorted § 87(2)(b) outside and asked her what happened. The officers noted that § 87(2)(b) claim that she had purchased a cell phone at the store did not make sense, as the UPS Store does not sell phones. Police Officer Shahzad also stated that § 87(2)(b) started crying, suggesting that she was in a highly emotional state. Based on these factors, the officers determined that § 87(2)(b) was emotionally disturbed and needed to go to the hospital.

Neither Police Officer Nyberg, Police Officer Shahzad or any other officer prepared an AIDED report for § 87(2)(b) (Board Review #09).

Police Officer Shahzad's BWC footage is attached in IA #31 (Board Review #04). At 2:00 into the recording, he and PO Nyberg walk § 87(2)(b) out of the UPS Store. She takes out a cell phone and claims that she bought it at the store. She claims to have a receipt. At 3:10 into the recording, she hands a piece of paper to Police Officer Nyberg. He examines it and tells her that it is not a receipt. She then hands him several additional pieces of paper, which he reports are also not receipts. At 4:10 into the recording, Police Officer Nyberg asks, "Ma'am, do you want to go..." § 87(2)(b) interrupts and states that she does not want to go to a hospital. She asks to wait at the store for the store owner to come. Police Officer Nyberg tells her that she cannot go inside. At 5:15 into the recording, Police Officer Nyberg tells her, "Ma'am, at this point, you're going to have to go to the hospital." She replies, "Okay." Police Officer Nyberg tells Police Officer Guillen to call for an ambulance.

Several minutes later in the video, when the ambulance does not arrive, the officers load § 87(2)(b) into the back of their marked SUV and drive her to § 87(2)(b). They arrive at 22:50 into the recording. At 23:15 into the recording, Police Officer Shahzad stands at the passenger's side of the SUV. § 87(2)(b) and Police Officer Nyberg are still sitting inside the vehicle. Police Officer Nyberg states, "You can't go there." § 87(2)(b) is seen to be speaking, but her words are muffled and inaudible. Police Officer Nyberg states, "§ 87(2)(b) no you don't." § 87(2)(b) Yeah, now it's going to get serious. You got a choice. You got a choice. Do you want to get arrested for the computer or do you want to go inside? You want that? You're going inside, § 87(2)(b). He then exits the vehicle. Police Officer Shahzad and Police Officer Nyberg then handcuff § 87(2)(b) and walk her into the emergency room.

NYPD Patrol Guide procedure 221-13 defines an emotionally disturbed person (EDP) as an individual who appears to be mentally ill or temporarily deranged and is conducting himself in a manner in which a police officer reasonably believes is likely to result in serious injury to themselves or others. If an EDP is unarmed, not violent and is willing to leave voluntarily, officers may take them into custody without the specific direction of a supervisor (Board Review #10).

§ 87(2)(g)  
§ 87(2)(b) The officers' BWC footage supports the officers' and employees' claim that she seemed confused and disoriented. § 87(2)(b) repeatedly insisted that she was there to complain about a cell phone she had purchased, despite the fact that the UPS Store does not sell phones. She insisted that she had a receipt to prove that she had purchased the phone there, but



instead produced other unrelated pieces of paper for Police Officer Nyberg.

In addition to being confused and disoriented, she also acted violently. The UPS Store video and the employees' testimony show that § 87(2)(b) knocked over the plastic barrier and the computers positioned on the counter. § 87(2)(g)

The BWC footage also confirms that § 87(2)(b) initially agreed to go with the officers to the hospital. Since she was not armed and was cooperative, § 87(2)(g) While § 87(2)(b) did eventually revoke this consent, by that time she was already in custody and at the hospital.

§ 87(2)(g)

**Allegation (D) Abuse of Authority: Police Officer Andrew Nyberg threatened to arrest an individual.**

It is undisputed that § 87(2)(b) entered the UPS Store and knocked items off the counter. After the police arrived and spoke to § 87(2)(b) outside, Police Officer Nyberg asked § 87(2)(b) the store manager, whether he wished to press charges. § 87(2)(b) declined to do so. Police Officer Nyberg and Police Officer Shahzad determined that § 87(2)(b) was emotionally disturbed and required medical assistance. The officers asked § 87(2)(b) if they could drive her to a hospital. § 87(2)(b) initially agreed. When Police Officer Nyberg and Police Officer Shahzad drove her to § 87(2)(b), however, § 87(2)(b) refused to exit the vehicle. Police Officer Nyberg told her that she would be arrested for her behavior inside the UPS Store if she did not go to the hospital.

§ 87(2)(b) told Police Officer Nyberg that he did not want to press charges against § 87(2)(b) because he believed that she was mentally ill and needed treatment. Neither he nor the other store employees were aware that § 87(2)(b) was later transported to the hospital. None of them were present when Police Officer Nyberg threatened to arrest § 87(2)(b).

Police Officer Nyberg initially denied that he threatened to arrest § 87(2)(b) at any time during the incident, including when she refused to enter the hospital. He noted that he did not feel that he had grounds to arrest her because § 87(2)(b) declined to press charges.

Police Officer Shahzad's BWC footage is attached in IA #31 (Board Review #04). At 23:35 into the recording, Police Officer Nyberg states, "§ 87(2)(b) no you don't. § 87(2)(b) Yeah, now it's going to get serious. You got a choice. You got a choice. Do you want to get arrested for the computer or do you want to go inside? You want that? You're going inside, § 87(2)(b)"

After viewing this footage, Police Officer Nyberg stated that he had no independent recollection of making that statement. When asked why he told § 87(2)(b) that she might be arrested, Police Officer Nyberg stated that he made the threat solely as a means of convincing § 87(2)(b) to cooperate and go into the hospital with him. He denied that he had any intention of arresting § 87(2)(b) at the time, noting again that he did not have grounds to arrest her because § 87(2)(b) declined to press charges.

The investigation determined that Police Officer Nyberg inappropriately threatened to arrest § 87(2)(b)

As Police Officer Nyberg himself acknowledged, he did not have any grounds to arrest § 87(2)(b) when he made the threat. § 87(2)(g)

§ 87(2)(g), § 87(4-b)

#### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review #12).
- Police Officer Nyberg has been a member of the service for 27 years and has been listed as a subject officer in seven other CCRB complaints and nine allegations, one of which was substantiated.
  - CCRB #9600111 involved a substantiated physical force allegation. The Board recommended that PO Nyberg receive charges. The NYPD dismissed the charges against him.
  - § 87(2)(g)
- Police Officer Shahzad has been a member of the service for one year. This is the first CCRB complaint in which he has been identified as a subject officer.

#### **Mediation, Civil and Criminal Histories**

- § 87(2)(b) declined to mediate this complaint.
- As of December 28, 2020, a Notice of Claim has not been filed regarding this incident with the NYC Office of the Comptroller.

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]

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Squad No.: 15

Investigator: Owen Godshall Inv. Owen Godshall 03/29/2021  
Signature Print Title & Name Date

Squad Leader: Simon Wang IM Simon Wang 04/16/2021  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date